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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,382	03/16/2004	Jeffrey K. Harman	021605.0101NIUS	3150
24283	7590	08/25/2004	EXAMINER	
PATTON BOGGS 1660 LINCOLN ST SUITE 2050 DENVER, CO 80264			KRECK, JOHN J	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/801,382

Applicant(s)

HARMAN ET AL.

Examiner

John Kreck

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-66 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of copending Application No. 10/183,741 and 10/315,275. Although the conflicting claims are not identical, they are not patentably distinct from each other because The claims in the instant application are generally broader than in the copending applications.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 102 and 103***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-18 are rejected under 35 U.S.C. 102(b) as being anticipated by "Coal Age Operating Handbook of Underground Mining" see page 103: the Coal Age document teaches the means for mining to create a highwall (see step 2); means for forming an insertion highwall (continuous miner); means for creating a starter entry (continuous miner) and means for supporting a roof (chocks). Applicant's preliminary remarks are noted; however, it is apparent that applicant has not described any special apparatus in the specification. It is also noted that applicant has used generic terms such as "continuous miner" and "roof support" to describe the apparatus; thus it is understood that the process of the current invention is carried out using conventional mining equipment. Applicant is invited to indicate sections of the specification or drawings that show mining equipment which is patentably distinguishable from the prior art.

4. Claims 19-28 and 42-48, 50, 54, 55, and 57-66 are rejected under 35 U.S.C. 103(a) as obvious over "Environmental Assessment of Surface Shortwall Mining". See page 129, second paragraph.

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The Environmental document teaches contour mining ("development of a bench"), and extracting mineral deposits ("removing all of the coal in that seam"). The document fails to explicitly teach creating an insertion highwall, however this would have been an obvious modification, based on geologic conditions (see figure 20, which teaches forming an insertion highwall, for ground control). It would have been obvious to one of ordinary skill in the art at the time of the invention to have included "creating an insertion highwall" as called for in claim 19, based on ground conditions.

The Environmental document teaches the repeating as called for in claim 20.

The Environmental document teaches the direction reversed as called for in claim 21.

The Environmental document teaches the direction reversed as called for in claim 22.

The Environmental document teaches the ventilating as called for in claim 23.

With regards to claim 24, straight highwalls are well known; it would have been obvious to one of ordinary skill in the art at the time of the invention to have made a straight highwall, based on geologic conditions (e.g. a straight contour).

The Environmental document teaches the shortwall as called for in claim 25.

The Environmental document teaches the longwall as called for in claim 26.

The Environmental document teaches the providing roof support as called for in claim 27.

The Environmental document teaches the advancing roof support as called for in claim 28.

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Regarding independent claim 42:

The Environmental document teaches mining the sloping surface ("development of a bench"), successively mining the mineral reserve ("removing all of the coal in that seam") and providing roof supports. The document fails to explicitly teach creating an insertion highwall, however this would have been an obvious modification, based on geologic conditions (see figure 20, which teaches forming an insertion highwall, for ground control). It would have been obvious to one of ordinary skill in the art at the time of the invention to have included "creating an insertion highwall" as called for in claim 42, based on ground conditions.

The Environmental document teaches the direction reversed as called for in claim 43.

The Environmental document implicitly teaches the mining as called for in claim 44.

With regards to claim 45; it is noted that the Environmental document explicitly discloses the process following the excavation of an entire bench surrounding a ridge; however it would have been obvious to one of ordinary skill in the art at the time of the invention to have performed the process on a partially stripped ridge, followed by extending the bench and highwall as called for in claim 45. Backfilling would have been obvious, since it is generally required by law in the US.

The Environmental document teaches the ventilating as called for in claim 46.

The Environmental document teaches the canopy (e.g. page 93); it would have been obvious to one of ordinary skill in the art at the time of the invention to have provided a canopy at each endwall as called for in claim 47, in order to protect the entries from debris.

With regards to claim 48: official notice is taken of the fact that it is common to couple canopies to fans, since this prevents material from clogging the ventilation passageways. It would have been obvious to one of ordinary skill in the art at the time of the invention to have included a fan coupled to at least one canopy as called for in claim 48.

With regards to claim 50; the mobile canopies are notoriously conventional, since they often have to be moved as mining conditions change; it would have been obvious to one of ordinary skill in the art at the time of the invention to have included mobile canopies as called for in claim 50.

The Environmental document implicitly discloses the allowing gob to collapse as called for in claim 54.

With regards to claim 55; the Environmental document teaches development of a bench around the entire ridge; thus implicitly teaching forming an extraction highwall as called for in claim 55

With regards to claim 57; the Environmental document fails to explicitly teach the manually advancing. Official notice is taken of the fact that such roof supports (chocks) are commonly advanced manually.

With regards to claim 58; the Environmental document teaches "development of a bench circumscribing a ridge"; which anticipates contour mining.

The bench taught by the Environmental document is adapted to support mining equipment as called for in claim 59

With regards to claims 60-62; the Environmental document shows a mobile power station in figure 22 between the belt and dump truck; the step of advancing the power station is inherent in such mining processes.

With regards to claim 63; Official Notice is taken of the fact that shield carriers are well known in the art, and are used to insert roof supports in mines. It would have been obvious to one of ordinary skill in the art at the time of the invention to have inserted roof supports using a shield carrier; since they are too heavy to carry by hand.

With regards to claim 64; Official Notice is taken of the fact that safety benches are well known in the mining industry; and are commonly used where a single highwall would have a dangerous height. It would have been obvious to one of ordinary skill in the art at the time of the invention to have included forming a safety bench, where ground conditions require one.

With regards to claim 65; the Environmental document shows a conveyor depositing coal on a stockpile in figure 22.

With regards to claim 66, straight highwalls are well known; it would have been obvious to one of ordinary skill in the art at the time of the invention to have made a straight highwall, based on geologic conditions.

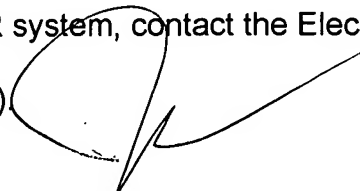


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kreck whose telephone number is (703)308-2725. The examiner can normally be reached on M-F 5:30 am - 2:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (703)308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John Kreck  
Examiner  
Art Unit 3673

**JOHN KRECK  
PRIMARY EXAMINER**

JJK